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SENATE BILL 2412 By
Henry

HOUSE BILL 2853
By Arriola

AN ACT to amend Tennessee Code Annotated, Title 71, Chapter 5,
Part 1, relative to alternatives for long-term care.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by
adding the following as a new Section:

Section ____.

(a) For purpose of this section only, the following definitions shall apply:

(1) "Initial Assessment Form" means the form utilized to collect
information necessary for a determination of level-of-care need;

(2) "Long-term care facility" means an intermediate care facility, a
skilled nursing facility (SNF), or a hospital providing skilled or intermediate
nursing care;

(3) "Make a referral" means a contact by telephone, referring the
name and address of the potential Medicaid recipient and any other
available pertinent information about the potential Medicaid recipient;

(4) "Medicaid agency" means the single state agency
administering or supervising the administration of the Tennessee State
Medicaid plan;

(5) "Medical assistance" means benefits provided under this part;

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(6) "Participation in the Medicaid program" means the ability and authority to provide services to eligible Medicaid recipients and to receive payment from the Medicaid program for the services;

(7) "Potential Medicaid resident" means any individual who:

(A) has already been determined to be eligible for Medical Assistance benefits,

(B) has applied for Medical Assistance benefits, or

(C) has less than one thousand dollars (\$1,000) in cash and liquid assets if single or less than two thousand dollars (\$2,000) in cash and liquid assets if married; and

(8) "Provider" means a skilled nursing facility, an intermediate care facility or a hospital providing skilled or intermediate nursing care which has been certified to participate in the Medicaid program;

(b) All providers shall make a referral to the toll-free long-term care hotline within one (1) working day after the facility is initially contacted by or on behalf of a potential Medicaid resident unless the potential Medicaid resident is, at the time of the initial contact:

(1) Residing in another long-term care facility as a Medicaid resident;

(2) In a hospital and had been in a long-term care facility as a Medicaid resident immediately prior to the hospitalization;

(3) In a hospital and hospital staff can document they have made a referral to the commission on aging;

(4) Residing in a state institution for the mentally ill or mentally retarded operated under Title 33; and

(5) A child (seventeen (17) years of age or under).

(c) In order to document that referrals to the commission on aging have been made as required by this section, providers shall provide the following information, with regard to each resident applying for Medicaid benefits, on the initial assessment form:

(1) The date the provider was initially contacted by or on behalf of the resident concerning admission to a long-term care facility;

(2) The date the resident was initially admitted to the provider's facility;

(3) The date a referral was made to the commission on aging and the screening referral number assigned by the hotline when the referral was made; and

(4) If the provider did not make a referral to the commission on aging, an explanation of why no referral was made.

(d) When the provider makes a referral to the commission on aging, the commission on aging will contact the potential Medicaid resident or his/her guardian within five (5) working days of the date of the referral. The commission on aging will provide the potential Medicaid resident with information regarding services available to meet the individual's needs in the home, if the services are available and with information regarding long-term care facilities. If the individual or his/her guardian wishes to receive services in a home-based setting, the commission on aging will evaluate the individual to determine the potential availability of alternative services and advise the individual or guardian that if she/he wishes to obtain financial assistance for these services, she/he will need to apply for Title XIX benefits at the respective county health department office. Once the application is made, services may be authorized by the commission on aging. If the individual or his/her guardian has no objection, the individual's

relatives and other significant persons, including the attending physician, may be included in discussions. If the person wants to enter a long-term care facility she/he will be given a form with documentation of the screening referral number to give to the provider to verify that alternatives to long-term care facility care have been presented.

(e) The Medicaid agency may terminate or suspend the participation in the Medicaid program of a provider determined to have demonstrated a consistent pattern or practice of failing to comply with this section. The Medicaid agency shall offer a provider the opportunity for a hearing.

(f) The Medicaid agency may withhold or recoup Medicaid payments to a provider for services provided to a resident from the time of admission to a provider's facility until the recipient is determined eligible for intermediate care facility or skilled nursing facility level-of-care if the provider failed to make a referral of that resident to the commission on aging as required by this section. This recoupment or withholding shall be accomplished utilizing the procedures, and after providing prior notice to the provider. Providers from whom payments have been withheld or recouped pursuant to this section shall not charge or attempt to charge the resident or his/her responsible party for the amount withheld or recouped by the Medicaid agency.

(g) The Medicaid agency shall not impose the sanctions provided for in subsection (e) or withhold or recoup in accordance with subsection (f) as a result of any failure to make a referral where the provider made a good faith effort to determine whether the resident in question was a potential Medicaid resident but received incorrect or incomplete information.

SECTION 2. Tennessee Code Annotated, Title 71, Chapter 5, Part 1, is amended by adding the following as a new section:

Section _____. In order to fund services for long-term care in setting other than a long-term facility, as defined in Section 1, for fiscal years 1998-1999, 1999-2000, 2000-2001, 2001-2002, and 2002-2003, at least five percent (5%) of funds allocated for care in long-term care facilities shall be reserved for expenditure in home and community-based services and other alternative services.

SECTION 3. The commissioner of health is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 4. This act shall take effect July 1, 1998, the public welfare requiring it.